

REVISED – July 19, 2010
DELTA STEWARDSHIP COUNCIL
June 24-25, 2010
MEETING SUMMARY

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DAY 1: Thursday, June 24, 2010, (10:00 a.m. – 4:00 p.m.)

1. Welcome and Introductions

The meeting was called to order at 10:00 a.m., June 24, 2010, by Chair Phillip Isenberg.

2. Roll Call – Establish a Quorum (Water Code §85210.5)

Roll call was taken and a quorum was established. The following members were present for the meeting: Phillip Isenberg, Gloria Gray, Randy Fiorini, Richard Roos-Collins, Hank Nordhoff, Patrick Johnston and Don Nottoli (arrived at 10:10 a.m.) Chair Isenberg provided an overview of the two-day meeting.

3. Chair's Report

Chair Isenberg began his report by announcing that the Senate Rules Committee's confirmation hearing, scheduled yesterday, for Mr. Roos-Collins and Chair Isenberg was postponed due to illness of one of the Rules Committee members.

Chair Isenberg also announced the next meeting (July) will be in the Delta, tentatively at the Old Sugar Mill. This will be the first meeting in the Delta and rather than the regular agenda, the Council will tour the Delta, then return to the Sugar Mill and begin the meeting. The Council would like to have a panel of local governmental representation and end the day with community input. The next day of the meeting would mainly be devoted to the discussion of the second draft interim plan.

4. Interim Executive Officer's Report (Discussion/Action Items)

a. Legislative and Legal Update

There was no verbal legislative update, however Interim Executive Officer Joe Grindstaff brought to the Council's attention the summary of bills staff is tracking for them which was included in their materials. Chair Isenberg briefed the Council on the Huffman bill.

Chris Stevens gave an update on the litigation regarding smelt and salmon biological opinions before U.S. District Court Judge Oliver Wanger.

b. Follow-up on Informational Requests from Council

Grindstaff noted the inclusion of the informational requests in the members' materials. The responses to the requests will be included as a regular agenda item.

c. Contracts

Grindstaff stated as a practice he would like to bring significant contract related requests to the Council for their approval even if they fell within his delegated authority. Grindstaff summarized three requests to direct him to execute Interagency Agreements with the Department of Water Resources and the Delta Protection Commission to augment funding for Council assistance for BDCP related work, the Delta Plan, and the DPC Economic Sustainability Plan.

Chair Isenberg and the Council discussed each request. The first was for \$300,000 for BDCP related work. Chair Isenberg asked for public comment on this request. As there was none, it was moved (Gray) and seconded (Nottoli) to approve the request. A vote was taken (7/0) and the motion unanimously passed.

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The second request, \$500,000, for the Delta Plan was addressed next. Chair Isenberg asked for public comment on this requested action. As there was none, it was moved (Nordhoff) and seconded (Roos-Collins) to approve the request. A vote was taken (7/0) and the motion was unanimously passed.

The last request for \$500,000 for the DPC Economic Sustainability Plan was discussed. Nottoli stated for the record he has no personal financial interest or conflict and thanked the Council for their efforts. Chair Isenberg called for public comment on this request. Bob Whitley, Contra Costa Council, spoke in support of the request. It was moved (Johnston) and seconded (Nottoli) to approve the request. A vote was taken (7/0) and the motion unanimously passed.

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5. Consent Calendar

Items for consent calendar are expected to be routine and non-controversial. The Council was asked to approve item 5a without discussion. If any Council member, staff, or interested person requests that an item be removed from the consent calendar, it will be taken up in the regular agenda order.

a. May 27-28, 2010 Meeting Summary

The meeting summary for May 27-28, 2010, Council meeting was approved with the two modifications. The first request was to include the time of adjournment on future meeting summaries. The second request was regarding Agenda Item 10 (Process for selecting an independent subcontractor for BDCP-related work) – the Council would like the names of the two Council members appointed to the Committee (Johnston and Fiorini) to be included in the summary.

Deleted: Public Comment on agenda item 4c was heard from the following:¶
Bob Whitley, Contra Costa Council If Whitley spoke on item 4c, how can we have in each action paragraph a 'none' for public comment? Either he spoke on another subject (in which case it should be described) or the 'no comment' was wrong. ¶
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6. Interim Lead Scientist's Report

The Interim Lead Scientist's Report was presented by Dr. Cliff Dahm. He reported on the Delta Science Program's involvement with the Bay Delta Conservation Plan (BDCP), participation in the joint meeting of the American Society of Limnology and Oceanography (ASLO) and the Northern American Benthological Society (NABS).

7. Appointments to the Delta Independent Science Board (Action Item) (Water Code §85080)

Dr. Dahm presented item 7, appointments to the Delta ISB. The Delta Stewardship Council is required by the Sacramento-San Joaquin Delta Reform Act of 2009 to appoint a Delta Independent Science Board of no more than ten members as one of their early actions. The Council directed the Interim Delta Lead Scientist to issue a call for applications for appointment to the ISB at their April 1, 2010 meeting. At the May 27-28, 2010, meeting the Council decided to hold this item over for consideration at the June meeting, allowing another month to review the listing of candidates. After discussion with the Council, it was moved (Johnston) and seconded (Gray) **to appoint the recommended candidates, Brian Atwater, Elizabeth Canuel, Tracy Collier, Mike Healey, Edward Houde, Judy Meyer, Jeffrey Mount, Richard Norgaard, Vincent Rush, and John Wiens, to the Delta ISB.** A vote was taken (7/0) and the motion was unanimously passed.

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Public Comment on agenda item 7 was heard from:
Spreck Rosekrans, Environmental Defense Fund
John Zebelean, Friends of Clear Lake Foundation

8. Administrative Procedures Governing Appeals (Water Code §85225.30)

Chris Stevens presented agenda item 8, summarizing the Council's enabling legislation and the water code section that requires the Council to adopt administrative procedures governing appeals. A draft administrative procedures governing appeals was provided to the Council for discussion purposes and Stevens heard Council members' comments and public comment. Stevens will revise the procedures, as appropriate, and bring them back (redline version) at the August meeting for formal adoption.

Public Comment on agenda item 8 was heard from:
Melinda Terry, North Delta Water Agency/CA Central Valley Flood Control Assn.
Greg Zlotnick, State and Federal Contractors Water Agency
Sprek Rosekrans, Environmental Defense Fund

The Council recessed for lunch and returned at 1:00 p.m.

9. Bay Delta Conservation Plan

Grindstaff gave an update on BDCP, noting that governance is a key issue that hasn't reached conclusion. Grindstaff expects significant information will be coming, such as sizing, and how a conveyance facility would be built.

Public Comment on agenda item 9 was heard from:
Melinda Terry, North Delta Water Agency/CA Central Valley Flood Control Assn.

a. Adopt Process to Retain Independent Consultant Assistance for Review of BDCP Issues (Water Code §85210(b) and §85320) (Action Item)

Randy Fiorini updated the Council on the status of the committee's (Johnston and Fiorini) search for an independent consultant to assist the Council in its statutorily-required review of the BDCP and its environmental review documents.

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Following discussion about the search process, the Council recommended that final selection be made as follows: (1) The Committee will make and inform staff of its priority ranking. (2) Staff will send an email notification to members - not intended for consensus or deliberation – for a 24-hour "fatal flaw" review. (3) If any member has a significant issue with the priority ranking, he or she can notify staff within that time period, and the negotiation and contracting process will be suspended and discussed at the July meeting. (4) If no objection is received from any member(s), staff should begin price negotiations with the highest ranked applicant and facilitate the execution of a contract as soon as possible.

After discussion it was moved (Roos-Collins) and seconded (Gray). A vote was taken (7/0) and the motion was unanimously passed.

b. Natural Communities Conservation Plans (NCCP)Habitat Conservation Plans (HCP) Presentation (Water Code §85320(b)(1); (d); (e))

Chris Stevens presented an informational item on Natural Communities Conservation Plans and Habitat Conservation Plans that included a presentation by Tom Gibson, General Counsel and Kevin Hunting, Chief Deputy Director, Department of Fish and Game. The presentation focused on NCCPs and HCPs and how the BDCP compares to those plans.

Public Comment on agenda item 9b was heard from:
Melinda Terry, North Delta Water Agency/CA Central Valley Flood Control Assn.
Tom Zuckerman, Central Delta Water Agency
Mark Rentz, ACWA
John Zebelean, Friends of Clear Lake
Spreck Rosekrans, Environmental Defense Fund

Deleted: The subcommittee will make a recommendation about who the independent consultant should be and the subcommittee is recommending the Council delegate authority to the Executive Officer to enter into agreement with the chosen consultant. ¶

¶ Grindstaff summarized the Council's recommendation that if the committee makes a recommendation on who the consultant should be the Council have an opportunity to vet the decision for fatal flaws. In order to comply with Bagley-Keene, the recommendation would be noticed and if a Council member said to hold it and put on the agenda, rather than issue the task order, it would be put on the agenda for the next meeting. Stevens said this would be only a one way communication and thus would not violate the state open meetings law (Bagley-Keene). It was agreed that the Council members would have 24 hrs to raise any concerns.

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c. Draft Letter Providing "Responsible Agency" Scoping Comments (Water Code §85320(c)) (Action Item)

Chris Stevens presented this agenda item requesting the Council approve the draft letter, with revisions as appropriate, and direct the Interim Executive Officer to

finalize the letter and send to DWR as soon as possible. He also requested the Council give staff "editing rights". Stevens explained the Council's "Responsible Agency" role regarding CEQA. The Council went through the proposed draft scoping comment letter section by section, suggesting revisions.

Public Comment on agenda item 9c was heard from:
Greg Zlotnick, State and Federal Contractors Water Agency
Barry Nelson, Natural Resources Defense Council
Spreck Rosekrans, Environmental Defense Fund
Melinda Terry, North Delta Water Agency/CA Central Valley Flood Control Assn.
Tom Zuckerman, Central Delta Water Agency
Matthew Emerick, City of Antioch

After the public comment, Chair Isenberg requested Stevens return a revised letter redline version tomorrow (June 25). It was moved (Fiorini) and seconded (Roos-Collins) to review the revised letter on June 25. A vote was taken (7/0) and the motion was passed.

10. Revised Staff Report on Briefing on Central Valley Flood

Due to time constraints, agenda item 10 was not addressed.

11. Revised Staff Report on Approval of DWR Proposition 1E Expenditures for Selected Levee Projects

Grindstaff summarized the main issues in this action item and staff's recommendation for the Council to approve the listed projects, subject to certain conditions, so funding may be encumbered based on the DWR process. After discussion and clarification by Grindstaff and Stevens on issues such as CEQA compliance and potential flood-related liability for the State, Richard Roos-Collins recommended the action be amended so that the Council would be approving an encumbrance of the entire amount requested (to prevent end of year budgeting reversion) (by the Department of Water Resources of the Prop 1E funds), but only approving expenditures for design, planning and environmental review, until the Council is satisfied, based upon its own independent judgment, that CEQA compliance with regard to potential construction activities has occurred. Roos-Collins felt approving the encumbrance but conditioning expenditure approval, would satisfy DWR's functional budgetary need to prevent reversion after June 30.

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Patrick Johnston stated he felt too much state money was being spent for a project that the beneficiary (EBMUD) pays too little. Johnston thought the project may have merit at a different funding ratio and it should prioritize which levees and flood protection projects need attention first unless there was enough money to do all them. He further suggested that this project be deferred understanding that the funding issue would be resolved.

The Council continued the discussion for clarification of the funding issue, cost-share, and priorities.

Randy Kanouse and Eileen White, East Bay Municipal Utilities District, informed the Council that they would like to present information to the Council regarding this issue and EBMUD's contributions to the levees. White also introduced the Council to representatives from the Reclamation Districts who were in attendance.

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Chair Isenberg requested that staff find out what happens to the money if action not taken and announced the item would be carried over and addressed first thing in the morning

The meeting concluded for the day at 4:35 p.m.

DAY 2: Friday, June 25, 2010 (9:00 a.m. – 4:00 p.m.)

13. Call to Order

The meeting resumed at 9:00 a.m. with Chair Isenberg presiding.

14. Roll Call – Establish Quorum (Water Code §85210.5)

Roll call was taken and a quorum was established. The following members were present for the meeting: Phillip Isenberg, Gloria Gray (left at 12:00), Randy Fiorini, Richard Roos-Collins, Patrick Johnston, Don Nottoli (arrived at 9:17 a.m.) Absent: Hank Nordhoff.

11. Revised Staff Report on Approval of DWR Proposition 1E Expenditures for Selected Levee Projects

The Council received a presentation on the 1E projects presented by Gail Newton, DWR's FloodSAFE Environmental Stewardship and Statewide Resources Office.

Joe Grindstaff distributed to the Council for its consideration, a staff draft resolution approving encumbrance of funds, but subject to conditions with regard to expenditures for the 10 projects identified for approval by DWR.

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Public Comment on this item was heard from:
Eileen White, East Bay Municipal Utilities District
Dante Nominelli, representing the Reclamation Districts and Central Delta Water Agency

After Council discussion of agenda item 11, Chair Isenberg restated the motion that will take staff's draft resolution, understanding there will be grammatical edits, with the introduction at the top and numbered paragraphs 1-4, which will become the action of the Council. Items 5, including a, b and c, will be moved to the discussion of flood policy/flood control probably in the Interim Plan and be discussed at that point. The specification of the water code section under which the Council gained authority to review this should also be included. With this statement of what the motion should be, it was moved (Roos-Collins) and seconded (Fiorini) to accept the motion. A vote was taken (6/0) and the motion was passed.

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The Council's action on this item was as follows:

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"In the absence of an independent determination by DWR that the 10 projects in question have complied with CEQA, and in the absence of information allowing the Council, as a CEQA "responsible agency" for these projects, to independently make the same determination:

1. The Council approves the expenditure of funds for design and planning and environmental review, for the 10 projects identified. The precise amount of funds needed for that purpose shall be determined by DWR, but will come from the funds earmarked by Water Code section 83002(a) (1).
2. The Council agrees that DWR may encumber the additional funds to a maximum of \$35.2 million, to ensure these funds are available for the purposes identified in Water Code section 83002(a)(1) and authorized by the voters in Proposition 1E. This approval of encumbrance does not approve financing, appropriation or other allocation of funds for construction of any of the projects, which must wait completion of legally required environmental documents.
3. Once DWR has allocated the funds for design, planning, and environmental review as indicated, it is requested that DWR request proper environmental documents from the applicants, which shall be produced in a timely fashion.
4. Once DWR receives proper environmental documentation sufficient to enable DWR to make its own, independent determination that CEQA has been complied with, DWR shall forward to the Council its findings and recommendations for construction funding. Council staff will then evaluate DWR's findings and make a recommendation for Council action.

The Council will then examine the documentation and make an independent determination of the adequacy of the environmental documents. *The Council reserves full discretionary authority for project approval at that point, including discretion to find that CEQA documentation is legally adequate, yet reject the project on substantive grounds.* Should DWR decline to make its determination regarding CEQA compliance, DWR is requested to provide a full explanation of its review of the environmental documents and the reasons it does not, or cannot, make that determination."

9c. Draft Letter Providing "Responsible Agency" Scoping Comments (Water Code §85320(c)) (Action Item)

Chris Stevens provided the Council with a redline version of the draft BDCP letter providing "Responsible Agency" scoping comments explaining the changes making sure the Council's comments were adequately addressed. Stevens recommended the Council approve the draft letter and its format. Stevens took

direction regarding clarification of the second bullet point on page number 2 on “purpose and project objective”.

Public Comment on this item was heard from:
Greg Zlotnick, State and Federal Water Contractors Agency

It was moved (Fiorini) and seconded (Roos-Collins) to approve the modified redline version of the letter and send it to DWR as soon as possible. A vote was taken (6/0) and the motion unanimously passed.

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15. Discuss First Draft Interim Plan and Provide Direction for Second Draft (Action Item) (Water Code§85084 and Water Code§85300)

Chair Isenberg went over the schedule of the Interim Plan. The draft interim plan presented is the first of three drafts. Terry Macaulay introduced the panel, Gwen Buchholz and John Kirlin to walk the Council through the document.

The panel hopes to go over the process that they’ve put together since the last meeting from the work groups and the methods to obtain input, confirm structure of interim plan, and obtain comments on several of the sections as they go through them. The first item mentioned were the three work groups that are planned, in the form of public meetings (Risk Reductions and Coequal Goals, Governance and Implementation and Reduced Reliance on the Delta), charters will be developed for these work group meetings. The Council requested summaries of the meetings.

Buchholz and Kirlin walked through sections I-V, discussing structure only and heard comments from the Council on the organization of the Interim Plan (basic structure).

Public comment on agenda item 15 was heard from:
Leah Orloff, Contra Costa Water District
Michael Boccadoro, The Dolphin Group
Greg Zlotnick, State and Federal Contractors
Nicole Suard
Karen Medders
Melinda Terry, North Delta Water Agency/CA Central Valley Flood Control Assn.
Jonas Minton, Planning and Conservation League
Ryan Bezerra, Bartkiewicz, Kronick & Shanahan
Spreck Rosekrans, Environmental Defense Fund
Gary Bobker, The Bay Institute

16. Preparation for Next Council Meeting – Discuss (a) expected agenda items; (b) new work assignments for staff; (c) requests of other agencies; (d) other requests from Council members; and (e) confirm next meeting date.

The next meeting is scheduled on July 22-23, in the Delta.

The meeting adjourned at 3:27 p.m.